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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16803

In the Matter of	:	
	:	**Administrative Law Judge**
MAHER F. KARA,	:	**Carol Fox Foelak**
	:	
Respondent.	:	
	:	

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT MAHER F. KARA AND SUPPORTING MEMORANDUM OF LAW

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[1] The Division Exhibits are being filed contemporaneously with this Motion for Summary Disposition and are attached to the Declaration of E. Barrett Atwood.

[2] The Joint Exhibits were filed with the parties' Joint Stipulation of Facts on October 19, 2015.

Joint Exhibit No.[2]	Description
7	July 7, 2011 Transcript of Maher Kara's Plea Hearing in *United States v. Maher F. Kara*, No. 09-CR-0417 (EMC) (N.D. Cal.)
8	August 19, 2015 executed Consent of Maher F. Kara to Entry of Judgment in *SEC v. Kara, et al.*, No. 09-cv-1880 EMC (N.D. Cal.)
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MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division") moves for summary disposition of the claims in the Order Instituting Proceedings against respondent Maher F. Kara ("Respondent" or "Kara"). The parties previously requested jointly to resolve this matter by cross-motions for summary disposition and the Court granted that request by Order dated October 5, 2015. The Division respectfully submits that summary disposition is appropriate here and should be granted in its favor because the Division's claims and request for relief under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") are undisputed by virtue of Kara's written plea agreement and conviction from his criminal case, *United States v. Maher F. Kara et al.*, No. 09-CR-0417 (EMC) (N.D. Cal.) (the "Criminal Action"), and the imposition of an order against Kara enjoining him from further violations of the securities laws, entered by the court with Kara's consent in *SEC v. Kara et al.*, No. 09-cv-1880 (EMC) (N.D. Cal.) (the "Civil Action"). The Division's Motion for Summary Disposition is supported by the attached Memorandum of Law, the Declaration of E. Barrett Atwood and related exhibits ("Division Exs."), and the previously filed Joint Stipulation of Facts ("Jt. Stip.") and related exhibits ("Jt. Exs.").

Dated: November 13, 2015

Respectfully submitted,

E. BARRETT ATWOOD
Trial Attorney
Division of Enforcement

MEMORANDUM OF LAW

I. INTRODUCTION

The public interest requires that Respondent Maher F. Kara be barred from the securities industry. The bases for barring Kara are not disputed. He has been enjoined from violating the antifraud provisions of the securities laws and he has been criminally convicted of conspiracy and securities fraud. Kara was an investment banker who betrayed his employer's and its clients' confidences by providing material nonpublic information about impending mergers, acquisitions, and other public company transactions to his brother, Mournir ("Michael") Kara, from 2004 through 2007, even though Kara knew it was wrong and illegal. Kara provided this information to Michael so that Michael could trade profitably on the related securities. Michael, in turn, tipped his friends and family members. As a result, Kara sat atop a widespread trading ring that reaped millions of dollars in illegal profits. Not only did Kara repeatedly violate the law over a period of many years, he also engaged in several deceptive acts in a failed effort to elude the authorities including repeatedly lying to the Securities and Exchange Commission ("SEC" or "Commission") staff during its pre-filing investigation. It was not until years later that Kara finally admitted to engaging in this egregious conduct knowingly and intentionally.

The insider trading ring was discovered by the authorities in 2007, leading to civil actions being brought by the Commission against eight defendants and five persons being indicted by the United States.[3] For his part in the scheme, in April 2009, Kara was indicted with one count of

[3] The Commission filed a litigated complaint in the Civil Action against six defendants and also filed related settled actions against two additional defendants implicated in the trading ring. Compl. (ECF No. 1), *SEC v. Mardini*, No. 09-cv-1882 (N.D. Cal. filed on Apr. 30, 2009); Compl. (ECF No. 1), *SEC v. Azar*, No. 09-cv-1881 (N.D. Cal. filed on Apr. 30, 2009). Pursuant to the consents entered into by the defendants in *Mardini* and *Azar*, final judgments were entered against them on May 22 and May 5, 2009, respectively. Final Judgment (ECF No. 6), *Mardini*,

conspiracy and 34 counts of securities fraud in the Criminal Action and also named as a defendant in the Commission's Civil Action. In July 2011, Kara entered into a written plea agreement with the United States Attorney's Office and pled guilty to one count of conspiracy and one count of securities fraud. In December 2014, the district court sentenced Kara and entered judgment against him in the Criminal Action. On July 2, 2015, Kara entered into a consent to settle the Civil Action and pursuant to that settlement, on August 21, 2015, the United States District Court for the Northern District of California entered a permanent injunction against Kara prohibiting him from committing further violations of the securities laws. The Commission subsequently initiated this proceeding. In the Division's view, Kara should be barred from the securities industry because of his criminal conviction, the civil injunction entered against him, his demonstrated inability to maintain the confidences of clients (even when he knew it might damage those clients' interests), and his years of deceptive conduct.

Kara's deceptive conduct during the time in which he was passing inside information to his brother, as well as his failure to tell the truth during the staff's underlying investigation, demonstrates that the public interest requires Kara be barred from the securities industry. In May 2007, Commission staff called Kara as part of its investigation into possible insider trading. During the telephone call, Kara lied repeatedly. For example, he lied about his access to confidential and nonpublic information at Citigroup in general and specifically with respect to public companies whose securities were at issue in the investigation. He also lied about discussing any nonpublic information with his brother and he lied about the timing of when he learned of specific material nonpublic information that he shared with his brother. He subsequently engaged defense counsel and denied the charges against him for years before

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No. 09-cv-1882 (N.D. Cal. entered on May 22, 2009); Final Judgment (ECF No. 6), *Azar*, No. 09-cv-1881 (N.D. Cal. entered on May 5, 2009).

ultimately deciding to cooperate with the criminal investigation and testify for the United States in two related criminal actions. Not only did Kara repeatedly break the law, he also went to great lengths to ensure that he would not get caught (albeit unsuccessfully). For example, Kara attempted to disguise himself as the insider, including sharing the confidences of clients with which he did not have a direct relationship, using code names when he tipped in order to disguise the identity of those clients, and supplying his brother with a publicly available research report to provide a cover story in the event an investigation arose.

While Kara's ultimate decision to cooperate is appreciated by the Division staff, his behavior shows that he should not hold a position of trust and the only appropriate outcome here is that he be barred permanently from the securities industry in order to protect the public interest. The Division therefore respectfully requests that the Court impose a collateral bar against Kara, permanently barring him from associating with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.[4]

II. BACKGROUND

The operative facts of this matter are not in dispute as evidenced by the parties' Joint Stipulation of Facts, filed on October 19, 2015. The background facts provided here are gleaned from that Stipulation, the Joint Exhibits submitted with that Stipulation, the testimony of Kara

[4] On July 14, 2015, the United States Court of Appeals for the D.C. Circuit held that the Commission does not have authority to bar individuals from associating with municipal advisors or nationally recognized statistical rating organizations based on conduct that occurred prior to the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376 (2010). *Koch v. SEC*, 793 F.3d 147, 157-58 (D.C. Cir. 2015). While some of the bases for the action here, Kara's criminal conviction and the entering of a permanent injunction against him, occurred after the passage of the Dodd-Frank Act, Kara's participation in the illegal trading scheme occurred before its passage. The Division has therefore elected not to request Kara be barred from associating with municipal advisors or nationally recognized statistical rating organizations.

and his brother Michael in two related criminal trials, and exhibits and pleadings from those criminal actions.

A. The Insider Trading Scheme.

Maher Kara worked as an investment banker specializing in the healthcare industry at Citigroup Global Markets Inc. ("Citigroup") from mid-2002 to the spring of 2007.[5] Jt. Stip. ¶ 9. At Citigroup, Kara advised public companies and other clients in the biotechnology and pharmaceutical industry about takeovers, acquisitions, mergers, corporate finance, and other multimillion dollar transactions. Jt. Stip. ¶ 9. In this role at Citigroup, Kara regularly possessed confidential and material nonpublic information about corporate transactions involving companies with publicly traded securities on which Citigroup worked. *Id.* Kara obtained this confidential and material nonpublic information by virtue of the relationship of trust and confidence between Citigroup and its clients. *Id.* At Citigroup, Kara had access to nonpublic information about pending acquisitions and other significant projects—not just the transactions on which he worked personally, but others within the Citigroup healthcare unit. Jt. Stip. ¶ 9; Jt. Ex. 6 at 4; Jt. Ex. 2 at 273:23-274:14, 296:4-16.

While at Citigroup, Kara was repeatedly trained on the need for confidentiality in the work he did as an investment banker.[6] Jt. Stip. ¶ 9; Jt. Ex. 2 at 274:15-280:19; Jt. Ex. 6 at 3. He

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[5] Kara earned his undergraduate degree from the University of California, Berkeley in 1993. Jt. Ex. 3 at 365:24-366:2. He later worked in the tax consultant group at Coopers & Lybrand, *id.* at 366:17-22, before earning his MBA from the University of Chicago in 1998. *Id.* at 367:15-23. After business school, Kara began working at Solomon Smith Barney, which subsequently merged with Citigroup, where he remained employed until 2007. *Id.* at 367:24-368:11.

[6] For example, Citigroup instructed its employees that:

> The misuse of material nonpublic information is a crime. Under U.S. Federal securities laws, misuse of material non-public information can constitute insider trading.

And:

fully understood that the intentional misuse of confidential and material nonpublic information he possessed was a crime. Jt. Stip. ¶ 9; Jt. Ex. 6 at 3. Despite this, Kara intentionally and knowingly betrayed the confidences of his employer, Citigroup, and many of its clients, by providing material nonpublic information to his brother, Michael, in breach of Kara's fiduciary duties. Jt. Stip. ¶ 2; Jt. Ex. 6 at 3-4. Michael, in turn, tipped numerous others, including his brother-in-law, Bassam Salman, and Karim Bayyouk, Salman's brother-in-law. Jt. Stip. ¶ 4; Jt. Ex. 6 at 3-4. Contemporaneous trading in related securities by Joseph Azar (a friend of Michael Kara), Nasser Mardini (a friend of Michael Kara who traded through a nominee, Andre Coudsi), Mazzen Mardini (Nasser Mardini's brother), and Hani Bayyouk (Karim Bayyouk's brother) further corroborated the widespread insider trading scheme. Jt. Stip. ¶ 4.[7]

On April 30, 2009, the Commission filed the Civil Action against six defendants: Maher Kara, Michael Kara, Karim Bayyouk, Zahi Haddad, Emile Jilwan, and Bassam Salman. Jt. Stip. ¶ 25. As described further below, the Commission's Complaint primarily concerned illegal trading in the securities of two healthcare companies, Andrx Corporation ("Andrx") and Biosite, Inc. ("Biosite"). *See generally* Compl. (ECF No. 1), *SEC v. Maher F. Kara, et al.*, No. 09-cv-1880 EMC (N.D. Cal. filed on Apr. 30, 2009) (attached as Division Exhibit 1). The SEC's Complaint against Kara alleges that the insider trading ring made at least $5 million in illegal profits. Division Ex. 1. ¶¶ 1-3, 46-55; *see also* Jt. Stip. ¶¶ 17, 19 (Kara admitting that Michael

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> Employees may not: Use confidential information or material non-public information to trade securities for their own (or related) accounts or to advise relatives, friends or others with respect to trading.

Jt. Stip. ¶ 9.

[7] In a related criminal action, the United States introduced without objection a chart depicting the individuals implicated in the scheme along with their relationships. *See* Division Exhibit 2 (Exhibit No. 417 from the trial of Bayyouk); Jt. Ex. 4 at 416:12-420:10 (Michael's testimony discussing the chart).

and Jilwan made over $3.8 million in illegal profits trading in Biosite and Andrx securities); Jt. Ex. 6 at 3-4 (same). To date, each civil defendant has settled in the Civil Action except for Michael (Kara's brother), who continues to litigate. Jt. Stip. ¶ 25.

Evidence from the related criminal trials of Karim Bayyouk and Bassam Salman, also described below, establish that Kara improperly shared confidential Citigroup information concerning at least 20 companies with his brother, Michael, between 2004 and 2007.[8] Kara's criminal indictment charged him with 34 counts of securities fraud stemming from illegal trading in numerous securities. Jt. Ex. 1. Some specifics of the scheme follow.

1. Insider Trading in Securities of Andrx Corp.

In December 2005, Wockhardt Ltd. ("Wockhardt"), an Indian drug company, engaged Citigroup's investment banking division as an advisor on its plan to acquire Andrx, a Florida drug maker. Jt. Ex. 2 at 305:20-307:10; Jt. Ex. 3 at 430:12-431:2. The Citigroup team included bankers in the healthcare group to provide industry expertise in completing an acquisition of a U.S. healthcare company. Jt. Ex. 2 at 307:2-308:23, 310:13-311:2, 313:19-314:2. Kara did not work directly on the acquisition, but he acknowledges that he was aware of Citigroup's work on the transaction and he received updates on the negotiations from a colleague. *Id.* at 313:19-

[8] *See* Jt. Stip. ¶¶ 12-19 (detailing Kara's sharing of material nonpublic information with Michael over the years and specifically admitting that he disclosed confidential information relating to Endo Pharmaceuticals, Protein Design Labs, Inc., Bone Care International, Inc., Andrx, Biosite, and United Surgical Partners International ("USPI")); Jt. Ex. 2 at 280:20-283:3, 306:21-317:22 (Kara testifying that he discussed nonpublic information with Michael concerning several companies, including Amylin Pharmaceuticals, American Pharmaceutical Partners, Schering-Plough, and Wockhardt); Jt. Ex. 3 at 389:3-392:6, 551:24-553:4 (Kara testifying about tipping Michael regarding companies such as Genetech); Jt. Ex. 4 at 433:1-445:4, 456:21-470:12, 479:22-482:21, 486:5-492:6, 495:18-499:10, 502:22-504:11 (Michael testifying to discussing with Kara nonpublic information concerning Amylin, Encysiv, ESP Pharma, Biogen, Elan, Cephalon, Neurocrine, Hospital Corporation of America, and others, and subsequently trading in their securities and tipping others accordingly); Jt. Ex. 5 at 978:21-980:4 (Michael testifying that he tipped Salman with information provided by Kara); Jt. Ex. 6 at 3-4 (Kara's plea agreement detailing tipping Michael concerning two impending acquisitions involving USPI and Biosite).

314:2, 317:11-321:2. Based on information he gained from his colleague, Kara told Michael that the "transaction for Andrx was likely to be consummated" before it was announced publicly. *Id.* at 321:3-12.

Michael placed his first-ever trades in Andrx securities on February 24, 2006, less than one day after Kara tipped him. Jt. Ex. 4 at 321:3-12, 486:18-487:9; Jt. Ex. 5 at 1101:3-1102:6. Michael purchased stock and short-term call options. *Id.* at 487:19-22. Within hours after his first Andrx trades, Michael called Salman, who subsequently caused calls in Andrx to be purchased in Bayyouk's account. Jt. Ex. 4 at 487:10-18; Jt. Ex. 5 at 1102:9-1103:23.

The Andrx board of directors accepted a competing offer to buy the company—rejecting Wockhardt—on March 12, 2006. Jt. Ex. 2 at 322:12-19; Division Ex. 1 ¶ 29. The acquisition agreement was publicly announced the following day. Division Ex. 1 ¶ 29. After the announcement, Andrx stock closed up approximately 10 percent from its prior closing price. *Id.* According to the SEC's Complaint in the Civil Action, in total, Michael and his tippees made illegal profits of over $1.1 million from their trading in Andrx securities. Division Ex. 1 ¶¶ 31-37.

2. Insider Trading in Securities of Biosite, Inc.

Citigroup's involvement with a potential Biosite acquisition began in March 2007. Jt. Ex. 2 at 334:14-337:8. Bankers from Citigroup's healthcare investment banking group learned from their client Beckman Coulter Inc. ("Beckman Coulter") that it was in advanced discussions with a possible acquisition target and would seek financing for the acquisition from Citigroup. *Id.* Over the next two weeks, Beckman Coulter and Biosite negotiated the terms of a friendly tender offer. Division Ex. 1 ¶ 41. Citigroup analyzed the deal and obtained the internal approval for Citigroup's commitment for the loan to purchase Biosite. *Id.*

Kara learned about the potential Biosite acquisition at a Citigroup healthcare meeting on March 19, 2007. Jt. Ex. 2 at 334:14-337:8. He admitted that he told Michael about the deal with the expectation that his brother would trade on the information. Jt. Ex. 2 at 337:7-339:13. Soon after the end of the call with Kara on March 22, Michael placed orders for out-of-the-money call options that expired the next month, his first-ever trades in Biosite securities. Jt. Ex. 4 at 497:4-502:9. Within minutes of his call with his brother, Michael called Salman, who promptly caused Biosite securities to be purchased in the account of Bayyouk. *Id.* Michael also tipped Azar. *Id.*

On Sunday, March 25, 2007, Beckman Coulter announced that it had reached an agreement with the management of Biosite to acquire the company in a tender offer. Jt. Ex. 2 at 341:19-344:8. Biosite stock rose 51 percent to close at $83.80 per share on March 26. Division Ex. 1 ¶ 44. Michael and Jilwan realized over $3.5 million in illegal profits trading Biosite securities (Jt. Stip. ¶ 19), and according to the SEC's Complaint in the Civil Action, the entire insider trading ring reaped more than $3.9 million in illegal profits. Division Ex. 1 ¶ 55.

3. <u>Suspicious Trading in Other Securities and Kara's Deceptive Conduct</u>.

In its Complaint, the Commission focused on the Andrx and Biosite trading. *See generally* Division Ex. 1. In addition to the Andrx and Biosite trades, however, the staff's investigation uncovered an extensive three-year pattern of trading that closely tracked confidential investment banking activities within Citigroup's healthcare group. In 2004, Michael began trading in companies that Kara tipped him on, and Michael tipped others with this information too. Jt. Ex. 4 at 415:8-416:11. Between 2004 and 2007, Michael purchased securities of at least 20 companies that were either parties to potential transactions involving Citigroup's healthcare investment banking group or had interactions with Kara or other bankers in the group. *Supra* n.8. Although in most cases the potential transactions did not take place,

and Michael and his tippees did not profit on the trading, the overall pattern of trading shows a concerted effort to capitalize on information passed to them by Kara.

Kara acknowledges discussing many companies that retained the Citigroup healthcare investment banking unit for advice or financial services with Michael. Jt. Stip. ¶¶ 12-19; *supra* n.8. Kara also admits that he suspected that his brother was using the information that he provided for insider trading. Jt. Ex. 2 at 329:13-330:12; Jt. Ex. 3 at 385:17-389:1, 447:1-20. In the summer of 2006—prior to the Biosite acquisition in the spring of 2007—Michael told Kara that shares of USPI, the acquisition target of a Citigroup client, looked "reasonably cheap to him." Jt. Ex. 2 at 329:13-23. Kara believed this indicated Michael was trading in USPI securities and that his brother "was likely trading" in the shares of the companies that they discussed. *Id.* at 330:1-12.

Realizing this, Kara made a conscious decision to engage in deceptive conduct in order to elude the authorities. Kara would share information about companies that he did not directly cover at Citigroup (like Biosite). Jt. Ex. 2 at 332:15-333:11, 337:10-338:24. Kara believed that sharing information about his colleagues' work would "reduce the likelihood that if something bad happened, that it would be attributed to me or related to me." Jt. Ex. 3 at 460:12-24. While Kara denies knowing that Michael was tipping his friends and family, he knew that Michael needed information more than money. Jt. Ex. 2 at 337:10-338:13. Michael needed "information" because he owed "somebody." *Id.*; *see also* Jt. Ex. 3 at 459:1-460:24 (same). Despite having reason to believe Michael would share this information with others, Kara continued to knowingly tip Michael (while attempting to cover his tracks) until the staff's investigation became public.

B. Kara and his Co-Conspirators Lie to Commission Staff.

In April 2007, the Commission staff commenced its investigation into insider trading in securities of Biosite. Jt. Stip. ¶ 20. The investigation began after the authorities found an unusual uptick in the trading of Biosite stock in the days just prior to the takeover announcement in late March 2007. *Id.* In May 2007, Commission staff called Kara as part of the investigation into possible insider trading relating to Biosite. *Id.* During the telephone call, Kara made a number of untruthful statements to the SEC staff:

- Kara denied having confidential information about Biosite when, in fact, he knew about the deal before it was announced to the public. *Id.*
- Kara also denied having told Michael about the pending Biosite acquisition when in fact he had given Michael confidential details about the closing. Jt. Ex. 3 at 469:2-17, 563:25-565:1; Jt. Ex. 6 at 4.
- Kara also told the SEC staff that, except on rare occasions, he had confidential information only for the companies he covered. That was not true. Rather, it was common for him to learn confidential information about companies covered by his colleagues at Citigroup. Jt. Stip. ¶ 20.
- Kara went so far as to also deny that he discussed any other stocks or companies with his brother, saying he never shared nonpublic information or any information about companies that he worked with. Again, this was not true. Jt. Ex. 2 at 346:5-23; Jt. Ex. 3 at 469:2-17, 569:12-17.
- Kara lied about knowing anything about Biosite and he falsely denied knowing of Biosite's proposed acquirer, Beckman Coulter. Jt. Ex. 3 at 565:2-567:3.
- Kara also lied about his knowledge of the USPI transaction, falsely claiming that he did not know about the acquisition until the day it was announced. Jt. Ex. 3 at 567:4-14.

In his trial testimony and in his plea agreement, Kara admitted that his statements to the staff were false. Jt. Ex. 2 at 346:5-23; Jt. Ex. 3 at 469:2-17, 560:16-563:19; Jt. Ex. 6 at 4. He claimed that he lied because he was "terrified," "afraid that [his] career would end," and "afraid of going to jail." Jt. Ex. 2 at 346:24-347:7. Several others interviewed by the SEC staff and involved in the scheme, including Michael, lied about details of their involvement with, and knowledge of,

insider trading. Jt. Stip. ¶ 6; Jt. Ex. 6 at 1142:19-1143:17; *see also United States v. Bayyouk*, No. CR-12-0420 EMC, 2013 WL 6155300, at *1 (N.D. Cal. Nov. 22, 2013) (unpublished order denying Bayyouk's motion for a new trial after being found guilty of obstruction for lying to the SEC). Those contacted by the Commission's staff, including Kara, began talking to each other about the investigation and the potential fallout, including criminal charges that could be brought against them. Jt. Ex. 2 at 344:16-345:18, 347:8-17; Jt. Ex. 3 at 467:21-468:16; Jt. Ex. 6 at 1147:22-1152:22.

C. The Criminal Proceedings against the Insider Trading Ring.

An indictment filed on April 21, 2009, charged Kara with conspiracy (18 U.S.C. § 371) and 34 counts of securities fraud (15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. §§ 240.10b-5, 240.10b5-1 and 240.10b5-2, 18 U.S.C. §§ 981(a)(1)(C) and 982) based upon insider trading in numerous securities, including those of Bone Care International, Inc. ("Bone Care"), Andrx, USPI, and Biosite. Jt. Stip. ¶ 2; Jt. Ex. 1. The indictment also brought conspiracy, securities fraud, and obstruction charges against Michael and Emile Jilwan. Jt. Stip. ¶ 2; Jt. Ex. 1. The indictment alleged that between approximately 2004 and 2007, Kara, Michael, and others engaged in an insider trading scheme. Jt. Stip. ¶ 2; Jt. Ex. 1.

The United States alleged a widespread scheme of illegal trading predicated on the confidential and material nonpublic information disclosed by Kara. Jt. Stip. ¶ 4. In addition to the charges against Kara, Michael, and Jilwan, the United States brought separate criminal actions against Bassam Salman and Karim Bayyouk. *Id.* Salman was indicted on September 1, 2011, for conspiracy and aiding and abetting securities fraud. *Id.* ¶ 5; *see also United States v. Salman*, 792 F.3d 1087, 1088-89 (9th Cir. 2015) (appellate decision affirming Salman's conviction and detailing the insider trading scheme). The charges against Salman arose from his participation in the same insider trading scheme as Kara and Michael. Jt. Stip. ¶ 5; *Salman*, 792

F.3d at 1088-90. The United States alleged that Salman disclosed some or all of the inside information to Karim Bayyouk and used a brokerage account in Bayyouk's name to trade securities and share the illegal profits. Jt. Stip. ¶ 5; *Salman*, 792 F.3d at 1089. Bayyouk was indicted on May 29, 2012, for obstruction of proceedings before the Securities and Exchange Commission (18 U.S.C. § 1505). Jt. Stip. ¶ 7; *Bayyouk*, 2013 WL 6155300, at *1.[9]

Kara initially pled not guilty and for years, he denied the charges against him. Jt. Ex. 2 at 368:2-22; Jt. Ex. 3 at 570:14-573:19. Kara also refused to testify substantively during the staff's investigation and asserted his Fifth Amendment right to remain silent. Jt. Ex. 3 at 369:5-14. Ultimately, however, Kara reversed course and decided to cooperate with the criminal authorities. On July 6, 2011, Kara entered into a plea agreement with the United States Attorney's Office for the Northern District of California. Jt. Stip. ¶ 21; Jt. Ex. 6. On July 7, 2011, pursuant to that agreement, Kara pled guilty to one count of conspiracy, in violation of 18 U.S.C. § 371, and one count of securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff. Jt. Stip ¶ 22; Jt. Ex. 7. Kara's brother, Michael, also entered into a plea agreement in order to resolve the charges against him. Jt. Ex. 4 at 390:8-23; Jt. Ex. 5 at 909:4-910:21.

The criminal actions against Bayyouk and Salman proceeded to separate trials in the United States District Court for the Northern District of California. Jt. Stip. ¶ 8. Kara and Michael both testified at each trial as witnesses called on behalf of the government. *Id.* ¶¶ 8, 23; *see also generally* Jt. Exs. 2 (transcript of Kara's testimony in *United States v. Bayyouk*, No. 12-CR-420 (EMC) (N.D. Cal. Aug. 27, 2013)), 3 (transcript of Kara's testimony in *United States v. Salman*, No. 11-CR-625 (EMC) (N .D. Cal. Sept. 17, 2013-Sept. 18, 2013)), 4 (transcript of

[9] The charge was predicated on Bayyouk's responses to the SEC during a telephone interview on May 31, 2007, as part of the staff's investigation into the insider trading scheme. Jt. Stip. ¶ 7; *Bayyouk*, 2013 WL 6155300, at *1.

Michael's testimony in *United States v. Bayyouk*, No. 12-CR-420 (EMC) (N.D. Cal. Aug. 27, 2013-Aug. 28, 2013)), and 5 (transcript of Michael's testimony in *United States v. Salman*, No. 11-CR-625 (EMC) (N.D. Cal. Sept. 20, 23, and 24, 2013)). Salman and Bayyouk were each found guilty of the charges brought against them and they subsequently lost their respective appeals of their convictions. *Salman*, 792 F.3d 1087; *United States v. Bayyouk*, 607 Fed. App'x 735, No. 14-10271 (9th Cir. 2015).

In December 2014, final judgment was entered against Kara in the Criminal Action and he was sentenced to three years of probation and ordered to pay a $200 assessment. Jt. Stip. ¶ 24; Final Judgment, entered Dec. 23, 2014 (Criminal Action, ECF No. 251) (attached as Division Exhibit 3).

D. Kara Consents to Entry of an Injunction in the Commission's Civil Action.

Although the Commission's staff initially embarked upon discovery after the Civil Action was filed in 2009, the case was repeatedly delayed and eventually stayed altogether at the request of the parties in order for the related criminal proceedings to be resolved.[10] After the conclusion of the related criminal proceedings, the parties to the Civil Action discussed settlement and ultimately, proposed settlements were agreed to in principle by Commission staff and Kara, Salman, and Bayyouk. Order dated June 8, 2015, at 2 (Civil Action, ECF No. 136) (attached as Division Exhibit 7). The district court stayed further civil proceedings while the Commission considered the proposed settlements. *Id.* On July 2, 2015, Kara executed his

[10] *See, e.g.*, Order dated Mar. 22, 2011, at 1-2 (Civil Action, ECF No. 86) (attached as Division Exhibit 4) (describing discovery efforts initiated but staying discovery and delaying proceedings while "significant issues [are] resolved in the criminal action"); Minute Entry dated Oct. 26, 2012, at 2 (Civil Action, ECF No. 113) (staying the Civil Action until the related "criminal matters are resolved") (attached as Division Exhibit 5); Order dated June 24, 2014 (Civil Action, ECF No. 125) (continuing deadlines while the criminal proceedings are resolved) (attached as Division Exhibit 6).

consent to the entry of judgment resolving the Civil Action. Jt. Ex. 8. The Commission subsequently approved the proposed settlements and the district court entered final judgment against Kara, Salman, and Bayyouk on August 21, 2015. *See, e.g.*, Final Judgment as to Def. Maher F. Kara (Civil Action, ECF No. 145) (Jt. Ex. 9). The judgment against Kara permanently enjoined him from violating Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)), Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), Section 14(e) of the Exchange Act (15 U.S.C. § 78n(e)), and Rule 14e-3 promulgated thereunder (17 C.F.R. § 240.14e-3). Jt. Ex. 9 at 1-2.

E. The Commission Institutes this Proceeding Against Kara.

With the Criminal Action and the Civil Action resolved with respect to Kara, on September 10, 2015, the Commission issued an Order Instituting Proceedings and Notice of Hearing pursuant to Section 15(b) of the Exchange Act ("OIP") in this matter. The OIP alleges that Kara: (1) holds Series 7 and 63 licenses; (2) formerly worked as an investment banker; (3) disclosed material nonpublic information that formed the basis of a multimillion dollar illegal insider trading scheme; (4) was convicted of conspiracy and securities fraud by entry of final judgment in the Criminal Action on December 23, 2014; and (5) in the Civil Action on August 21, 2015, was permanently enjoined from violating the securities laws. OIP ¶¶ 1-4. Kara admits the substance of these allegations. *See* Am. Answer of Respondent, dated Nov. 10, 2015, ¶¶ 1-4 (while correcting Kara's age, the time period he worked at Lehman Brothers, Inc., and the date of his guilty plea, admitting the substance of the foregoing allegations but denying Kara was aware that Michael tipped others or that he was aware of the profits the illegal trading ring generated).

III. ARGUMENT

Based on Kara's admissions and his underlying conduct, the Division respectfully requests that Kara be barred from the securities industry in order to protect the public interest. Resolution of this matter by summary disposition is appropriate and should result in Kara being barred permanently. Rule 250(b) provides that summary disposition may be granted "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." The Commission has repeatedly upheld the use of the summary disposition procedure in cases in which the respondent has been convicted or enjoined, leaving the appropriate sanction as the sole determination. *Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009) ("We have repeatedly upheld the use of summary disposition by a law judge in cases … where the respondent has been enjoined or convicted of an offense listed in Exchange Act Section 15(b) …, the sole determination is the proper sanction, and no material fact is genuinely disputed."), *pet. denied*, *Kornman v. SEC*, 592 F.3d 173 (D.C. Cir. 2010). Once it has be shown that a respondent has been convicted of violating the securities laws or is enjoined from violating any of their provisions, the burden passes to the respondent to "'show cause' why he should not be censured or disqualified from appearing and practicing before [the Commission]." *Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 SEC LEXIS 3624, at *8 (Sept. 4, 2015).

The undisputed facts here show that the Division is entitled to summary disposition. Kara admits that he was the tipper for a widespread insider trading ring, was criminally convicted for his role in the scheme, was permanently enjoined from violating the securities laws, and that he lied to the Commission staff in the underlying investigation. There are no

genuine disputes of material fact. Therefore, the only remaining issue is the appropriate sanction. Summary disposition is thus warranted.

A. The Undisputed Facts Compel Summary Disposition in the Division's Favor.

The OIP seeks remedial relief against Kara under Section 15(b) of the Exchange Act. That Section authorizes the imposition of remedial relief against individuals who have engaged in certain types of misconduct, such as securities fraud. Section 15(b) of the Exchange Act provides in pertinent part:

> With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, ... the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—
>
> ...
>
> > (ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or
> >
> > (iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

15 U.S.C. § 78o(b)(6)(A). Section 15(b) thus authorizes remedial relief against an individual associated with a broker or dealer at the time of the underlying misconduct who has been convicted within the past ten years of any offense described in Section 15(b)(4)(B) or who has been enjoined from engaging in conduct in connection with the purchase or sale of any security under Section 15(b)(4)(C). The offenses described in Section 15(b)(4)(B) include any conviction involving the "purchase or sale of any security," "arises out of the conduct of the business of a

broker, dealer, … bank, [or] fiduciary," or is made under Title 18 of the United States Code. Section 15(b)(4)(B)(i), (ii), and (iv).

The facts meeting these statutory requirements for remedial relief are undisputed here. Kara has been enjoined from violating Sections 10(b) and 14(e) of the Exchange Act, and Rules 10b-5 and 14e-3 thereunder, provisions barring fraud "in connection with the purchase or sale" of a security or "in the offer or sale of any securities." Thus, the injunction meets the definition of 15(b)(4)(C). Additionally, Kara's criminal convictions for conspiracy and securities fraud fall within the offenses specified by Section 15(b)(4)(B). The Division is therefore entitled to summary disposition in its favor.

B. To Protect the Public Interest, Kara Should Be Permanently Barred.

Given the egregious, repeated, and harmful nature of Kara's misconduct, the appropriate remedy to protect the public interest is a permanent associational bar. In determining which remedy to impose upon Kara under Section 15(b), the Court may consider: (1) the egregiousness of his actions; (2) the isolated or recurrent nature of his misconduct; (3) the degree of scienter involved; (4) the sincerity of any assurance against future violations; (5) his recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see also Melvin,* 2015 SEC LEXIS 3624, at *8 (citations omitted) (describing the *Steadman* factors to be considered for remedial sanctions against an accountant in a Rule 102(e) proceeding); *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *8 (Sept. 20, 2012) (same); *Chris G. Gunderson, Esq.*, Exchange Act Release No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) (citations omitted) (applying *Steadman* factors in Rule 102(e) proceeding to determine remedial sanctions against attorney). The application of these factors "is flexible" and

"no single factor is dispositive." *Melvin*, 2015 SEC LEXIS 3624, at *8-9 (citing *Pattison*, 2012 WL 4320146, at *8). The Court also considers "the extent to which a sanction may have a deterrent effect." *Id.* at *8-9 (citing *Pattison*, 2012 WL 4320146, at *8). Because remedial sanctions should promote the "public interest," the Court "weigh[s] the effect of our action or inaction on the welfare of investors as a class and on standards of conduct in the securities business generally." *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975).

Applying these factors to this case, the Court should find that Kara represents such a "significant threat to the integrity of [the Commission's] processes that he must be permanently" barred. *See Melvin*, 2015 SEC LEXIS 3624, at *10 (permanently disqualifying an accountant from appearing or practicing before the Commission for accountant's role in disclosing material nonpublic information for purposes of insider trading). Kara's actions were egregious, made with a high degree of scienter, and recurred multiple times between 2004 and 2007. While occupying a position of trust and confidence with Citigroup, Kara misappropriated confidential information from Citigroup's clients, including those he worked with and those of his colleagues, to personally benefit his brother, Michael. Kara tipped Michael for years despite being trained by Citigroup that these actions were criminal. Kara admittedly knew that Michael was trading in the securities of the companies they discussed and he had reason to believe that Michael was sharing this confidential information with others.

While Kara denies having direct knowledge of the extent of Michael's tipping and the resulting profits, the illegal trading ring only thrived through Kara's misappropriation of confidential information, in breach of his fiduciary duties to Citigroup's clients. Kara's professed ignorance of the millions of illegal dollars reaped by the ring does not undercut the egregiousness of his misconduct or the high degree of scienter with which he acted.

In addition to knowing his conduct was wrong, Kara took active steps to conceal his actions and mislead authorities in the event an investigation arose. For example, Kara and Michael used code words to disguise the companies they discussed (Jt. Ex. 2 at 333:16-334:8; Jt. Ex. 3 at 447:1-20; Jt. Ex. 4 at 410:4-415:6, 438:5-440:14; Jt. Ex. 5 at 936:6-954:18, 991:10-992:25, 1388:7-10), Kara misappropriated confidential information from clients that he did not work with in an effort to throw investigators off his trail (Jt. Ex. 2 at 332:15-333:4), and he provided a publicly available Citigroup research report to Michael to create a false justification for Michael's investment in USPI if an investigation ever occurred. Jt. Ex. 2 at 333:5-15; Jt. Ex. 3 at 445:16-446:25, 580:14-583:16. And when Commission staff called Kara during its investigation, Kara repeatedly lied.

Kara's disclosures of Citigroup's clients' confidences were "particularly serious because the non-public information related to a tender offer, and the specific details he passed along about the imminence of the tender offer and the anticipated share price enhanced the tippees' ability to profit from the misappropriated information." *See Melvin*, 2015 SEC LEXIS 3624, at *10-11 (citing *Tender Offers*, Exchange Act Release No. 17120, 1980 WL 20869, at *4-5 (Sept. 4, 1980) ("The abuses which result from trading in securities by persons in possession of material, nonpublic information are particularly troublesome in the context of tender offers. . . . This practice results in unfair disparities in market information and market disruption.")). It is undisputed that Kara discussed the timing of at least one tender offer, made by Beckman Coulter to acquire Biosite, with Michael. Michael in turn traded profitably on that information and tipped others that also traded profitably. Kara also testified that any leak regarding the Andrx acquisition would likely result in Andrx's share price rising and "it would disrupt the transaction." Jt. Ex. 2 at 311:15-312:8; *see also id.* at 309:5-8 (Kara testifying that disclosure of

the proposed Andrx acquisition would likely "cause a very significant increase in the stock price of Andrx"). Despite this, Kara readily shared the details of the proposed Andrx acquisition with Michael. Kara thus tipped this very sensitive information to his brother knowing that Michael would likely trade on the information and that Michael owed "information" to "somebody." Jt. Ex. 2 at 337:10-338:13; *see also* Jt. Ex. 3 at 459:1-460:24 (same). Accordingly, the evidence leads to the singular conclusion that Kara acted egregiously, with a high degree of scienter, on multiple occasions.

Kara will likely respond that despite the foregoing, he should not be barred permanently from the securities industry because he has acknowledged his wrongdoing, is sincere in his assurances that he will not violate the securities laws again, and the Court should conclude that the likelihood of his future violations is low. But such arguments should be considered in their full context. Prior to Kara's acknowledgement of wrongdoing, the Commission's staff and federal criminal authorities engaged in exhaustive investigations into the illegal trading scheme, which required years of ensuing litigation. When first questioned by the staff, Kara not only denied any wrongdoing, but also lied about his job and the access he had to material nonpublic information. When subpoenaed to testify in the staff's investigation, Kara asserted his Fifth Amendment right to remain silent. It was not until the summer of 2011, four years after learning of the staff's investigation and more than two years after the Civil Action and criminal indictment against him had been filed, that Kara decided to acknowledge his wrongdoing and cooperate with the criminal authorities. While the Division shares the subjective hope that Kara will not engage in future misconduct, given his history of misappropriating confidences from multiple clients, attempting to cover his tracks, denying wrongdoing, and lying to Commission

staff, the objective evidence suggests that Kara will likely commit future violations of the securities laws if he is provided the opportunity.

Kara's "actions reveal a highly troubling willingness to ignore a fundamental professional obligation to respect and protect client confidence along with a willingness to instigate and facilitate fraudulent stock trading activity." *See Melvin*, 2015 SEC LEXIS 3624, at *17-18 (citation omitted); *see also Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 WL 56755, at *4 (Jan. 9, 2009), *pet. denied*, 586 F.3d 122 (2d Cir. 2009) (finding that investment banker who disclosed confidential client information regarding a pending acquisition "violated one of the most fundamental ethical standards in the securities industry"). Under such circumstances, a permanent bar is the only appropriate remedy. *See, e.g.*, *Melvin*, 2015 SEC LEXIS 3624, at *34 (issuing permanent bar against CPA who misappropriated client confidence and tipped four persons regarding one pending acquisition, and subsequently consented to a permanent injunction but was not prosecuted criminally). The Commission has previously stated that "conduct that violates the antifraud provisions of the federal securities laws, including insider trading, is 'especially serious' and warrants 'the severest of sanctions.'" *Id.* at *11 (quoting *Peter Siris*, Exchange Act Release No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013); *Toby G. Scammell*, Investment Advisers Act Release No. 3961, 2014 WL 5493265, at *5 (Oct. 29, 2014)).[11] Moreover, "[f]idelity to the public interest requires a severe sanction when a

[11] *See also David G. Ghysels and Kenneth E. Mahaffy, Jr.*, Exchange Act Rel. No. 62937, 2010 SEC LEXIS 3079, at *16 (Sept. 20, 2010) (in affirming initial decision to bar broker-dealer and investment advisor based on their convictions for conspiracy to commit securities fraud, holding that "'[a]bsent extraordinary mitigating circumstances,' a person convicted of conspiracy to commit securities fraud' cannot be permitted to remain in the securities industry") (quoting *John S. Brownson*, Admin. Proc. File No. 3-10295, 2002 SEC LEXIS 3414; 55 S.E.C. 1023 (July 3, 2002)); *Robert Bruce Lohmann,* Exchange Act Rel. No. 48092, 2003 WL 21468604, at *5 (June 26, 2003) (in affirming initial decision to impose broker-dealer and investment adviser bars for

respondent's misconduct involves fraud because the 'securities business is one in which opportunities for dishonesty recur constantly.'" *See Melvin*, 2015 SEC LEXIS 3624, at *5-6 (quoting *Scammell*, 2014 WL 5493265, at *5). Further, "an antifraud injunction 'ordinarily' warrants barring participation in the securities industry.'" *Id.* (quoting *Gunderson*, 2009 WL 4981617, at *5).[12]

Not only is a permanent, collateral bar justified here, a strong deterrent message is needed. Engaging in securities fraud is a serious crime and betrayal of client confidences undermines the integrity of the securities industry and the markets in general. It is appropriate to send a message of deterrence to similarly situated individuals at broker-dealers and investment banks. While the Division believes it is important to support persons who cooperate with the authorities, it is at least equally important that egregious conduct not be ignored, and a permanent, collateral bar from the industry is therefore necessary. Accordingly, the Division respectfully requests that Kara be barred permanently.

IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court grant the Division's motion for summary disposition and issue an order permanently barring Kara from associating with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent.

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tipping, stating "[i]nsider trading constitutes clear defiance and betrayal of basic responsibilities of honesty and fairness to the investing public").

[12] *See also Daniel J. Gallagher*, Initial Decision Rel. No. 644, 2014 WL 3749734, at *4 (July 31, 2014) ("A conviction involving dishonesty requires a bar, and because of the Commission's obligation to ensure honest securities markets, an industry-wide bar is appropriate.").

Dated: November 13, 2015

Respectfully submitted,

E. BARRETT ATWOOD
Trial Attorney
Division of Enforcement

CERTIFICATE OF SERVICE

I, John Stearns, hereby certify that an original and three copies of the foregoing

- **DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT MAHER F. KARA AND SUPPORTING MEMORANDUM OF LAW; and**
- **DECLARATION OF E. BARRETT ATWOOD**

were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, and that a true and correct copy of the foregoing has been served by United Parcel Service, marked for next day delivery, on November 13, 2015, on the following persons entitled to notice:

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

In addition, an electronic copy has been served by email to

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John Stearns